



STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
LANSING



JENNIFER M. GRANHOLM
GOVERNOR

MICHIGAN IV-D ACTION TRANSMITTAL 2007-010

TO: All Friend of the Court (FOC) Staff
All Office of Child Support (OCS) Staff

FROM: Marilyn F. Stephen, Director
Office of Child Support

DATE: May 16, 2007

SUBJECT: Enforcing Remitter Non-Sufficient Fund (NSF) Payments

PURPOSE:

This Action Transmittal (AT) provides direction to Michigan State Disbursement Unit (MiSDU) staff and FOCs when the bank returns a payment made by or on behalf of a non-custodial parent (NCP) for NSF reasons (e.g., closed account, funds unavailable, etc.).¹

BACKGROUND:

Michigan Compiled Law (MCL) 552.607a states that the FOC “shall not consider a payer to have an arrearage if the payer produces documentary evidence that money has been withheld from the payer’s income in an amount equal to or greater than the amount required under the payer’s support order.” Practical interpretation of this statute has varied among individual FOC offices.

PROGRAM ACTIONS AND POLICY INFORMATION:

MiSDU Action

If an NCP or source of income (SOI) remits an NSF payment to the MiSDU, MCL 400.236 authorizes the MiSDU to take actions to collect the support or fee payment, plus fees for the expense of those actions. The current fee for submitting an NSF payment to the MiSDU is \$20 for checks less than \$100, and 20 percent of the check amount for checks \$100 or more. The MiSDU assesses these fees based on the service fees charged by the banks for processing the NSF payment and the Michigan Department of Treasury for costs related to the recovery of the debt. The MiSDU assesses the fees against the NSF payment when the bank notifies the MiSDU. If the

¹ Ref: Michigan Child Support Enforcement System (MiCSES) *Customer Information Guide: NSF Processing* at: http://mi-support/systems/micses/cig/fin/nsf_processing.pdf.

MiSDU does not submit the debt to the Michigan Department of Treasury, MiSDU staff will assist the NCP or SOI in reducing any assessed fee, if possible. To recover the debt, MiSDU staff will:

1. Send a letter requesting immediate payment and a handling fee (Ref: Attachment 1) to the remitter (employer or NCP). If the employer remitted the original payment, MiSDU staff will also send a copy of the letter to the NCP.² This letter will inform the remitter that the MiSDU will require the remitter to submit future payments via a more secure payment method, such as certified check, cashier's check or money order;³
2. Back out the receipt. If the receipt was disbursed, MiSDU staff will create a Recovery – Bank Adjustment Transaction (RB) debt type;
3. Send the *Michigan State Disbursement Unit (MiSDU) Return Check Report* (Ref: Attachment 2) to the FOC offices that request this report. This report shows the county all the NSF's in that county backed out on the day the bank processed the NSF payment, and lists information associated with the returned payment;

Note: For the FOC offices that request a copy of this report, MiSDU staff will send the report to the FOC's State of Michigan Novell GroupWise confidential email address according to the requirements in AT 2005-069, **REVISED:** *Transmission of Restricted Information via Email.*⁴

4. Send a second letter (Ref: Attachment 3) to the remitter if the remitter does not respond to the first letter after 90 days; and
5. Turn over the debt to the Michigan Department of Treasury for collection once the NSF exceeds 180 days.⁵

MiSDU staff must enter a note on the *Notes Processor* (NOTE) screen in MiCSES indicating any contacts with the remitter to collect payments or make collection arrangements. This is in addition to entering notes in any internal data management system (e.g., Tier Trac or Kids First).

If FOC staff have questions regarding the actions taken by the MiSDU, they must call the MiSDU FOC Helpline at 1-800-817-0623. An employer who wishes to inquire about an action taken by the MiSDU must be referred to the MiSDU Employer Helpline at 1-800-817-0805. IV-D case members (NCPs or custodial parties [CPs]) with questions regarding payment processing must be directed to the county Interactive Voice Response (IVR) system.

² MiSDU uses the letter for both employer and NCP NSF's.

³ Ref: AT 2005-023, **REVISED:** *Use of State Make Whole Funds* at:

http://mi-support.cses.state.mi.us/policy/stateat/?year=2005#AT2005_023.

⁴ Ref: http://mi-support.cses.state.mi.us/policy/stateat/?year=2005#AT2005_069.

⁵ MiSDU staff have indicated that they collect most NSF recoupments within 180 days.

If MiSDU staff are unable to collect the NSF's in 180 days, they can escalate incidents to the MiSDU director prior to sending the debt to the Michigan Department of Treasury. The MiSDU director, in consultation with the OCS Executive Management Team (EMT), may choose to warn the remitter of possible show cause action under MCL 552.613. This warning will serve as the MiSDU's final communication to the remitter if negotiations to recover the NSF amount and any applicable fees have not succeeded.

FOC Action

The actions MiSDU staff will take against the employer regarding the NSF payment(s) may influence the approach the FOC chooses to take with regard to enforcing the NCP's unpaid support obligation. Because MCL 552.607a is subject to interpretation, an FOC may choose to:

1. Enforce against the NCP the support that has gone unpaid as a result of the employer's NSF; or
2. Credit the NCP with the payments represented by the NSF and continue to enforce other unpaid balances against the NCP; or
3. Credit the NCP with the payments represented by the NSF, continue to enforce other unpaid balances against the NCP, and initiate action against the employer for failure to comply with the income withholding notice.

If FOCs choose options 1 or 3 above, they will duplicate the MiSDU's efforts to recover the balance from the employer directly. Such duplication of effort may result in employer confusion, the NCP being overpaid, or unnecessary staff time at the FOC and MiSDU.

If FOCs choose option 2 above, they may verify the correct enforceable balance by using the *Michigan State Disbursement Unit (MiSDU) Return Check Report*. To verify the correct enforceable balance, FOC staff will take the amount of any documented evidence⁶ of employer withheld payments and subtract it from the enforceable arrears balance on the case.

Example:

An NCP has \$1,500 in employer NSF's, and a total arrearage of \$5,000. The FOC must subtract \$1,500 from the \$5,000 total arrearage to determine the enforceable arrearage: \$3,500. Enforcing more than \$3,500 against the NCP will lead to duplicate enforcement while MiSDU staff attempt to recover the \$1,500 from the employer.

⁶ Documented evidence, as described in MCL 552.607a, includes "...pay stubs, wage statements, or other written income verification produced by the payer's employer." FOC staff must determine whether the employer's NSF payment information (as reflected in the *Michigan State Disbursement Unit [MiSDU] Return Check Report*) constitutes documented evidence under the statute. Since the information was not presented by the NCP (as required by the statute), even if FOC staff determine that this information is documented evidence, FOC staff must also determine if any enforcement action against this amount will continue. With this information, FOC staff can determine if the payer's arrears are below the enforcement threshold.

This AT does not restrict the FOC staff's right to take action for an NCP's lack of diligence in ensuring his/her withheld income is paid.

NCP Action

NCPs who want to file a complaint against their employer for withholding a support payment from their wages and failing to send the withholding to the MiSDU must be directed to the Wage & Hour Division within the Michigan Department of Labor & Economic Growth.

The NCP also may take civil action against the employer.

LEGAL REFERENCES:

Federal
None

State
MCL 400.236
MCL 552.607a
MCL 552.613

POLICY REFERENCES:

AT 2005-023, **REVISED:** *Use of State Make Whole Funds*
AT 2005-069, **REVISED:** *Transmission of Restricted Information via Email*
AT 2006-049, **REVISED:** *Income Withholding Notices (IWNs)*

AT MAINTENANCE:

Retain AT until further notice.

EFFECTIVE DATE:

Upon receipt.

REVIEW PARTICIPANTS:

Financials Work Improvement Team
Friend of the Court Association Review Board
Program Leadership Group
Lynn Davidson, Macomb County FOC
Steve Capps, State Court Administrative Office (SCAO)

CONTACT PERSON:

Nancy Fredricks
OCS Senior Business Analyst
Fredricksn@michigan.gov
(517) 241-5036

CC:

All Prosecuting Attorney (PA) Staff

ATTACHMENTS:

Attachment 1 – NSF employer letter #1

Attachment 2 – *Michigan State Disbursement Unit
(MiSDU) Return Check Report*
Attachment 3 – NSF employer letter #2

MFS/NF